U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30338287

Date: MAY, 7, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner is an entrepreneurial logistics analyst who seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver (NIW) of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the record established that the Petitioner qualified for the underlying visa classification, but that he did not merit a discretionary waiver of the job offer requirement in the national interest. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for an NIW, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Once a petitioner demonstrates eligibility for the EB-2 classification, they must then establish that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the term "national interest," *Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating NIW petitions. *Dhanasar* states that USCIS may, as matter of discretion, grant an NIW if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

The purely discretionary determination of whether to grant or deny an NIW rests solely with USCIS. *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining four U.S. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny an NIW to be discretionary in nature).

II. NATIONAL INTEREST WAIVER

The Petitioner has over two decades of experience in his home country's military where he operated in the area of logistics. His proposed endeavor consists of creating a management consulting firm in the United States in which he plans to hire 32 U.S. workers over a five-year period.

We note a portion of the Petitioner's April 14, 2022 definitive statement effectively mirrors the content within an article relating to entrepreneurs with only slight alterations to the passage. The content in question provides:

> In the United States, small businesses are often called the backbone of the economy. Policies that encourage the growth of small businesses, as well as the role of entrepreneurship in the market, are healthy for the nation at large. For a capitalist economy to thrive, there must be competition, growth, and innovation . . . . Successful entrepreneurs are naturally competitive, think outside of the box, . . . and see . . . how an industry . . . could benefit from a fresh take.

The above portion of the passage is taken word-for-word from the internet and the Petitioner offered no attribution to it as originating from an external resource. *The Role of Entrepreneurship in Job Creation and Economic Growth*, HuffPost (Nov. 15, 2017), https://www.huffpost.com/entry/the-role-of-entrepreneurs_b_12964394. We do not consider the slight alterations to the original content to mean those changes relieved Petitioner of the duty to give attribution to the article's author rather than presenting them as his own thoughts. This article existed when the Petitioner filed the petition, and it creates the possibility that his other statements or evidence in the record might also contain salient portions that are wholly taken from external sources and may not reflect what he actually intends to do.

It is reasonable for USCIS to consider a foreign national's plagiarism from the internet as evidence of their overall lack of credibility. *Tawuo v. Lynch*, 799 F.3d 725, 728 (7th Cir. 2015). Because the Petitioner has not been afforded the opportunity to address this apparent shortcoming, we do not conclude that his other statements in the record lack credibility. But this calls into question the independent and credible nature of the Petitioner's claims leaving us hesitant to accept his other statements as true on their face, or to grant them full evidentiary value.

A. Substantial Merit and National Importance (Collectively *Dhanasar's* First Prong)

The first prong, substantial merit and national importance, focuses on the specific endeavor that the individual proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Dhanasar*, 26 I&N Dec. at 889.

The Director discussed the Petitioner's evidence to include his business plan and concluded his statements were not supported by adequate evidence to prove his claims. The Director noted a lack of evidence to show how the proposed endeavor will affect the region or the United States financially or through job creation, noting the current size of the consulting industry.

Within the appeal, the Petitioner contests the Director's determination while claiming the proposed endeavor has the potential to significantly contribute to the United States economy through job creation and economic impact. Instead of providing further explanation and evidence in support of that statement, the Petitioner simply moves on to the next argument against the Director's decision. Mere conclusory assertions do not enable us to determine whether a filing party's eligibility claims are any more reliable than hopeful speculation. *Matter of Ho*, 22 I&N Dec. 206, 213 (BIA 1998). *See also Matter of Valencia*, 19 I&N Dec. 354, 355–56 (BIA 1986); *Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978); *Matter of Martinez-Romero*, 18 I&N Dec. 75, 79–80 (BIA 1981).

Next, the Petitioner raises arguments that focus on several aspects of the logistics sector and industry rather than directly on his proposed endeavor. For instance, the Petitioner discusses "submitted Industry Reports and Articles," none of which were about his proposed endeavor. In the appeal, the Petitioner mentions the proposed endeavor's focus on the broader industry while at the same time attempting to attribute the national importance of the broad industry to his endeavor and he explains how the endeavor aligns with "nationwide activities and business productivity." The Petitioner reasons that he will create value for U.S. organizations through improved processes and planning. He surmises this, in turn, will allow those companies to maintain these successful processes making them more resilient to economic downturns directly impacting the domestic job market culminating in new job creation and workforce dependability.

Simple alignment or shared common aspects with industry improvements or goals are not sufficient to meet the first prong's national importance portion. In focusing generally on the entire logistics sector's impact to U.S. businesses, the Petitioner has not established his specific endeavor will substantially benefit and impact the field more broadly. This misplaced focus does not address the national importance requirements of the *Dhanasar* decision, nor does it adequately tie the Petitioner's endeavor to those business improvements. *Dhanasar*, 26 I&N Dec. at 893.

The Petitioner further offers numerous quotes from articles focusing on entrepreneurialism itself and on the field, but again not the proposed endeavor and what level of impact it would have on the industry. The types of impact of his entrepreneurialism and the resulting benefits to the economy are incremental and are not impactful at the level warranting a waiver of the job offer requirement. Lacking from the record is an indication of the extent to which the Petitioner's endeavor would make his claimed contributions, and as such, a showing that his endeavor would have substantial positive economic effects rather than incremental or nominal impacts. Nominal growth of an industry is not sufficient to meet the national importance requirement under the *Dhanasar* framework. *Id.* at 889–90.

We close discussing an issue the Director raised concerning the HUBZone program implemented by the U.S. Small Business Administration (SBA), the Director's decision noted that the Petitioner "stated the company will not be in a HUBZone, and is not eligible for consideration of the HUBZone program." The Petitioner takes issue with these findings within the appeal. For context, the SBA indicates the "HUBZone encourages economic development in historically underutilized business

zones. The federal government's goal is to award three percent of all prime and subcontracting dollars to businesses in the HUBZone program each year." *HUBZone administration*, U.S. Small Business Administration (Mar. 22, 2024), https://www.sba.gov/partners/contracting-officials/contracting-program-administration/hubzone-administration.

Further, the Petitioner has not argued that HUBZones in "historically underutilized business zones" constitute the same type of "economically depressed area" discussed in *Dhanasar* when evaluating the proposed endeavor's national importance through the potential to employ U.S. workers or through the endeavor's other substantial positive economic effects.

The SBA also provides specific program qualifications for the HUBZone program, and it does not appear the Petitioner or the proposed endeavor meet those requirements. The SBA lists the following requirements for businesses:

1. Be at least 51% owned and controlled by U.S. citizens, a Community Development Corporation, an agricultural cooperative, an Alaska Native corporation, a Native Hawaiian organization, or an Indian tribe;
2. Have its principal office located in a HUBZone;
3. Have at least 35% of its employees living in a HUBZone; and
4. Be a small business according to SBA size standards.

HUBZone program, U.S. Small Business Administration (Apr. 4, 2024), https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program#id-hubzone-program-qualifications.

We were unable to locate where the Petitioner has addressed any of these requirements. In fact, relating to item 1 above, the proposed endeavor's business plan reflects the Petitioner will own 60 percent of the company. Furthermore, the Petitioner is not a U.S. citizen as he is applying for this immigration benefit as a basis to qualify for lawful permanent resident status. And still under item 1, the Petitioner has not proven that the corporation—that is the proposed endeavor—is one of the five other types of entities that the SBA requires.

Moving on to item 2, the location of the proposed endeavor listed on the corporate documents in the record are not in a HUBZone, nor are the only other addresses the Petitioner offered as example addresses in [redacted] or in [redacted] Finally, the Petitioner does not address what percentage of his prospective employees will live in a HUBZone, so he has not shown that he has a plan in place to meet item 3. In the end, the Petitioner's HUBZone program claims have not panned out and they will not aid in his effort to demonstrate that the proposed endeavor has national importance.

Because the Petitioner has not sufficiently established the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, he has not demonstrated eligibility for an NIW of the job offer requirement. Because the Petitioner has not established that his proposed endeavor satisfies the *Dhanasar* framework's first prong, he is not eligible for an NIW and further discussion of the second and third prongs would serve no meaningful purpose. Consequently, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate

decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.